**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO. 968 OF 1989**

The Board of Trustees of the Port of Bombay, a body corporate constituted under the provisions of the Major Port Trust Act, 1963 as amended by the provisions of the Major Port Trust Amendment Act, 1974 and having their office at Vijay Deep, Shoorji Vallabhdas Marg, Ballard Estate, Bombay- 400 038. ... Plaintiff.

V/s.

1. M/s.Jayant J. Shah Pvt.Ltd. having its address as Port Box 2626, Singapore- 9046.

2. Habib Bank Ltd., a Bank carrying on business at Harapam Buildings, 141, Market Street, Singapore- 0104. ... Defendant.

3. M/s.Maritime Services Pvt.Ltd. a company registered office at 301-303, Emca House, 289, Shahid Bhagat Singh Road.

4. United States Lines Agency, a Division of the third Defendant abovenamed having its address also at 301-303, Emca House, 289, Shahid Bhagat Singh Road, Bombay- 400 023.

U.J.Makhija with M.Khandar i/b. Motiwalla & Co. for the plaintiff.

None for the defendants.

**CORAM: V.C.DAGA, J.**

**DATED: 20th December 2007.**

**JUDGMENT :**

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. This suit is filed by the plaintiff to recover warehouse rental charges in respect of goods imported by the defendants and stored in the plaintiff's warehouse in Mumbai. The charges which are being recovered are said to be as per the scale of rates duly prescribed, under the bye-laws framed, published and brought into force under the provisions of the Major Port Trusts Act, 1963.

**The Facts :**

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2. The factual matrix reveal that the defendant Nos.1 and 2 had imported 6 containers of Waste Paper, manifested at Item No.14 of the Import General Manifest No.2984 dated 13th December, 1985 ("said consignment" for short). The defendant Nos.3 and 4 are the bailors who discharged the said consignment in the custody of the plaintiff. Therefore, according to the plaintiff, defendant Nos.1 and 2 are the owners, and defendant Nos.3 and 4 are the bailors, as such they were bound and liable to take delivery of the consignment within 7 days of its landing and pay wharfage, demurrage

charges to the plaintiff with other charges which accrued thereon for the period during which the said consignment remained with the plaintiff. The defendants, however, failed to clear the said consignment, consequently, it continued to remain in the premises of the plaintiff. The said consignment came to be confiscated vide order dated 29th September, 1987 passed by the Collector of Customs.

3. On being asked by the plaintiff, the defendant No.4, vide its letter dated 20th September, 1988, informed the plaintiff that defendant No.1 was the ‘Notified Party’; whereas defendant No.2 was the consignee in respect of the said consignment.

4. The plaintiff, vide its letters all dated 15th November, 1988 informed defendant Nos.1, 2 and 4 respectively about the aforesaid confiscation order and called upon them to pay sum of Rs.26,02,040.96. According to the plaintiff, by letter dated 21st November, 1988, defendant No.4 wrongly denied its liability to pay the Port Trust charges. By further letters all dated 28th November, 1988, the plaintiff once again called upon defendant Nos.1, 2 and 4 to remit the said sum of Rs.26,02,040.96. The defendants failed to pay the

said amount, hence this suit was filed.

5. On being summoned, defendant Nos.3 and 4 appeared and filed their written statement denying their liability. The defendant Nos.1 and 2, though served as far back as in 1990, neither put up their appearance nor filed their written statement. Accordingly, *ex parte* decree in terms of prayer clause (a) of the plaint was passed against defendant Nos.1 and 2 under order 8 rule 5 of Code of Civil Procedure, 1908 ("C.P.C." for short) leaving the suit to be decided against defendant Nos.3 and 4.

**Issue for Determination :**
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6. Considering the rival pleadings of the parties, issues were framed by this Court on 21st November, 2007. The issues and my findings thereon are as under:

| ISSUES | FINDINGS |
|---|---|
| 1. Whether the suit is barred by the Law of Limitation as alleged in para-14 of the written statement of the defendant Nos.3 and 4? | No. |
| 2. Whether the defendant Nos.3 and 4 are the owner/ bailors of the suit consignment as stated in para-5 of the plaint? | Yes. |

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|---|---|---|
| 3. | Whether the suit consignment incurred pre-confiscation port trust charges of Rs.26,02,040.96 as stated in para-7 of the plaint? | Yes. |
| 4. | Whether the plaintiffs are entitled to recover from the defendant Nos.3 and 4 the amount of Rs.26,02,040.96 being the pre-confiscation port trust charges in respect of such consignment together with a sum of Rs.21,959.04 paise being interest @ 15% p.a. from 15.11.1988 till 8.12.1988 aggregating to Rs.26,24,000/- as stated in para-19 of the plaint? | Yes. |
| 5. | To what reliefs, if any, the plaintiffs are entitled? | As per the final order. |
| 6. | What order and decree? | - " - |

**Consideration & Findings :**

7. The plaintiffs have filed affidavit in lieu of oral evidence duly affirmed by Shri Elias John Almeida, Assistant Docks Manager, the authorised signatory of the plaintiff and produced documents in support of the suit claim. Copy of notice to admit documents was served on the defendants. Seven days time was granted to them to reply the said notice. In spite of lapse of more than seven days, none of the defendants have replied the said notice. Nobody has appeared on behalf of the defendants. As such,

in view of order XII rule 2-A of Code of Civil Procedure, 1908 the documents, which were not denied after service of notice to admit documents, were treated to have been admitted and exhibited as Exh.P-1 to P-10. Even otherwise all these documents were proved through affidavit filed in lieu of evidence. Nobody has appeared on behalf of the defendants to cross-examine the affiant or to challenge the legality or validity of the documents. Under these circumstances, for want of challenge, the plaintiff would be entitled to decree as prayed in the suit.

8. In the above view of the matter, suit filed by the plaintiff deserves to be decreed in toto. Hence the following order:

O R D E R

(i) The suit is decreed.

(ii) The defendants do pay Rs.26,24,000/-, with interest on the sum of Rs.26,02,040.96 calculated thereon from the date of suit till payment or part payment thereof at the rate of 12% per annum with costs.

(iii) Decree be drawn in terms of this order.

**(V.C.DAGA, J.)**